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In the Supreme Court of the United States

OCTOBER TERM, 1987

TOWN OF NORTH BONNEVILLE, WASHINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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This case arises out of a contract between petitioner and the Army Corps of Engineers, under which the Corps of Engineers undertook to relocate petitioner and its residents. The contract was entered into pursuant to special legislation. Water Resources Development Act of 1974, Pub. L. No. 93-251, § 83, 88 Stat. 35. Petitioner claimed that the Corps of Engineers breached the agreement in a number of ways, and the government counter-claimed against petitioner.

1. Petitioner Town of North Bonneville, Washington, is located very close to the Bonneville Dam, which was constructed and is operated by the Army Corps of Engineers (Corps) (see Pet. App. B6-B7). "In 1965, the Bonneville Power Administration, which markets electrical power generated by the dam, requested the Corps of Engineers to construct a second powerhouse" (*ibid.*). The Corps eventually adopted a plan for the new powerhouse

that "would call upon the United States to acquire some 95% of the area then occupied by North Bonneville, and would result in the removal of all the residences, businesses and municipal facilities in the Town" (*id.* at A2).

Town officials informed the Corps of Engineers that the residents preferred to be relocated as a community, rather than individually under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (Pet. App. A2). In response, Congress enacted Section 83(a) of the Water Resources Development Act of 1974, Pub. L. No. 93-251, 88 Stat. 35, which authorized the Secretary of the Army "to relocate the town of North Bonneville, Washington, to a new townsite."

Pursuant to Section 83, petitioner and the Corps entered into a series of agreements covering arrangements for relocation (Pet. App. A2). "The new Town has been built, with the Corps acquiring relocation land, constructing municipal facilities and giving relocation assistance to individuals" (*ibid.*). In the process, the Corps spent more than $45,800,000, which represents roughly $95,000 for every inhabitant of the Town in 1971 (*id.* at B67).

In May 1975, while construction of the second powerhouse was underway and negotiations on petitioner's relocation were ongoing, petitioner imposed a business and occupation (B&O) tax on contractors working within its jurisdiction, which at that time still included the construction site (Pet. App. B33-B34). The Corps reimbursed its contractors for their tax payments to petitioner (*id.* at B96). Although the planned new town did not include the site of the second powerhouse, "[w]hen [petitioner] recognized in July 1975 an opportunity to capture additional tax revenues, it decided to retain the old town boundary. Subsequently, release of the old boundary

around the powerhouse was used by [petitioner] as a bargaining chip in the negotiations [with the Corps]" (*id.* at B96-B97). Petitioner continued to collect B&O taxes on its old location through 1982 (see *id.* at B98).

2. The negotiations and the relocation process involved a number of disputes between petitioner and the Corps (see Pet. App. B27-B35). In 1980, petitioner brought this lawsuit against the United States in the Court of Claims (now the Claims Court), alleging numerous breaches of the relocation agreements and seeking more than $14 million in damages, a figure since raised to roughly $27 million (*id.* at A2-A3). The government responded that petitioner had breached the agreements and counter-claimed for more than $13 million (*id.* at A3).

After a lengthy trial, the Claims Court ruled in favor of petitioner on three of its claims—those related to the conveyance of certain specific parcels of land, to construction deficiencies, and to reimbursement of salary expenses—and awarded petitioner a total of $567,093.10 (Pet. App. A3, B258).

The Claims Court ruled in the government's favor on two of its counterclaims. With respect to the B&O taxes paid to petitioner by the Corps' contractors and reimbursed by the Corps, the court found that petitioner had undertaken to withdraw its municipal boundaries from its former site, and thus to stop collecting taxes on business conducted there, "when the relocation work was completed and the new town facilities and utilities were occupied by [petitioner]" (Pet. App. B98). The court therefore awarded the government damages of $1,421,996.70, the amount of B&O taxes collected by petitioner and reimbursed by the Corps after the relocation was completed (*ibid.*). The Claims Court also found that the government was entitled to recover $365,181.32 in operation and maintenance costs that the Corps had incurred on peti-

tioner's behalf (*id.* at A3). The court granted the government an affirmative judgment only with respect to the operation and maintenance costs, and limited its recovery on the B&O tax counterclaim to an offset against the award to petitioner (*id.* at B258). Because the judgment on the B&O taxes exceeded petitioner's total judgment, the net result was an award in favor of the government of $365,181.32, the amount of the operation and maintenance costs (*ibid.*).

In a per curiam opinion, the court of appeals affirmed the Claims Court's "comprehensive, specific, detailed opinion" (Pet. App. A3) in all respects but one: it reversed the trial court's award to petitioner based on its claim that the Corps failed to convey two particular parcels of land as part of the relocation arrangement (*ibid.*). Accordingly, petitioner's recovery was reduced by $191,100.74. The government's net recovery, however, was unaffected, because its judgment on the B&O taxes was still treated only as an offset.

3. In this Court, petitioner challenges only the judgment in favor of the Government on its counterclaim for B&O taxes. Petitioner's contentions present no issue of general importance and are, in any event, without merit.

a. As the Claims Court explained, the question before it was "whether there [was] an obligation for the Town to withdraw its boundary from around the powerhouse site * * * under Section 83 and the agreements of the parties" (Pet. App. B95). The court found that, although none of the agreements specifically addressed a change in petitioner's boundaries, Section 83 clearly contemplated that petitioner's boundaries would be altered so as not to include the site of the new powerhouse (Pet. App. B96). Accordingly, the court found that petitioner had an obligation to withdraw its jurisdiction from its former site once relocation was completed (*id.* at B98).

Petitioner maintains (Pet. 7-9) that the lower courts held in the government's favor on the B&O taxes because they erroneously interpreted Section 83 as an attempt by Congress to redraw municipal boundaries, which petitioner contends Congress has no power to do. See U.S. Const. Amend. X. Neither the Claims Court nor the court of appeals, however, suggested that Congress had sought directly to set municipal boundaries, and neither discussed the purported Tenth Amendment issue. Rather, they found that, pursuant to Section 83, petitioner undertook (in exchange for valuable consideration) to ensure that its jurisdiction would be withdrawn from the land it formerly occupied. When petitioner failed in that undertaking, it was found to be liable in damages for the money the government paid to it as a result (Pet. App. B97-B98).

b. Petitioner next argues (Pet. 9-10) that Section 83 must not be read as conditioning relocation assistance on a change of petitioner's municipal boundaries, because of the doctrine that the conditional nature of federal grants to the States must be unambiguous. See, *e.g.*, *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981). Petitioner did not raise this issue below and the lower courts did not address it. In any event, this case is utterly unlike those on which petitioner relies. Petitioner is a municipality, not a State, and the conditional nature of the assistance offered through Section 83—a statutory provision enacted specifically to relocate petitioner—could not be more clear: Congress offered aid for the purpose of relocation, making it plain that by accepting federal funds petitioner undertook to change its boundaries.

c. Finally, petitioner suggests (Pet. 11-14) that this Court should review the lower courts' determination that Section 83, when it offered federal aid for petitioner's relocation, contemplated that as part of the relocation

petitioner's boundaries would be changed. As the Claims Court found, "[w]hen Section 83 was enacted, and in the planning phase, both parties believed the movement of [petitioner] would be a relocation to a new site and not an expansion of the old town boundaries" (Pet. App. B96). Petitioner argues that Congress could have thought otherwise, relying on several factors (see Pet. 11-13) that it claims might have led Congress to use the term relocation in some special sense. But there is no indication that any of these considerations actually influenced Congress when it adopted Section 83.* In any event, there is no warrant for review by this Court of this question of statutory interpretation that has no implications whatsoever beyond this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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* Petitioner's reliance (Pet. 11) on *Woodville* v. *United States*, 152 F.2d 735 (10th Cir. 1946), is unpersuasive. That decision turned on the facts of that case, not on any special definition of relocation. See 152 F.2d at 736 (no relocation because "[o]nly about fifty of the three hundred residents of Woodville moved to the new town").

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